

FACTSHEET

TITLE: **CHANGE OF ZONE NO. 3350**, a text amendment requested by the Director of Planning, to amend Title 27 of the Lincoln Municipal Code regarding the storage of vehicles for sale and resale in the H-2 Highway Business District and the H-3 Highway Commercial District as a permitted conditional use; and to delete the storage of vehicles for sale and resale on any portion of a lot where parking is permitted as a special permitted use in the B-3 Commercial, H-2 Highway Business, H-3 Highway Commercial and I-2 Industrial Park Districts (§§ 27.33.040, 27.41.030, 27.41.040, 27.43.030, 27.43.040, 27.49.040).

SPONSOR: Planning Department

BOARD/COMMITTEE: Planning Commission
Public Hearing: 02/20/02 and 03/06/02
Administrative Action: 03/06/02

RECOMMENDATION: **DENIAL** (5-1: Steward, Carlson, Bills-Strand, Taylor and Newman voting 'yes'; Schwinn voting 'no'; Krieser and Duvall absent).

STAFF RECOMMENDATION: Approval, as revised on February 27, 2002, with amendment deleting the I-2 Industrial Park District.

FINDINGS OF FACT:

1. The staff recommendation to approve this text amendment, as revised, is based upon the "Analysis" as set forth on p.3-4, concluding that this amendment provides a greater setback and increased landscaping in comparison to the proposal submitted by William Austin on behalf of the Nebraska Independent Auto Dealers Association and the West "O" Area Business Association (Change of Zone No. 3352). The setback and landscaping are consistent with the standards either being developed or under discussion for the entryways and public way corridors.
2. The ordinance hereby submitted to the City Council is set forth on p.13-26. This ordinance deletes the reference to the I-2 Industrial Park zoning district and is the compromise reached between the city staff, the auto dealerships and the West "O" Area Business Association.
3. The minutes of the Planning Commission are found on p.5-12. The ordinance reviewed by the Planning Commission and the Memorandum of explanation from the staff are found on p.28-42. The draft ordinance reviewed by the Planning Commission included the I-2 Industrial Park District because that zoning district had been included in the application submitted by William Austin. The staff and Mr. Austin have agreed that the I-2 Industrial Park zoning district should not be included in this proposal and it has been deleted from the ordinance now submitted to the City Council.
4. Additional information from the Building & Safety Department regarding the impact and enforcement of this legislation is found on p.26-27.
5. The applicant's testimony and testimony in support is found on p.5-6; 7-8; and 9-10, and the record consists of two letters in support from the West "O" Area Business Association and the Nebraska Independent Auto Dealers Assn. (p.43-44).
6. On March 6, 2002, during continued public hearing, William Austin verbally withdrew Change of Zone No. 3352, and agreed with the revised proposal for Change of Zone No. 3350.
7. Testimony in opposition is found on p.6 and 8-9, and the written documentation submitted by the opposition is found on p.45-65.
8. The Planning Commission discussion is found on p.9-12. On March 6, 2002, a motion to approve the revised proposal, with amendment replacing 6' with "one-half of the front yard" (which would equate to 12.5' to 15') and adding provision for lighting standards, failed 2-4 (Carlson and Schwinn voting 'yes'; Steward, Bills-Strand, Newman and Taylor voting 'no'; Duvall and Krieser absent). See Minutes, p.11-12
9. On March 6, 2002, the Planning Commission disagreed with the staff recommendation and voted 5-1 to recommend **denial** (Steward, Carlson, Bills-Strand, Taylor and Newman voting 'yes'; Schwinn voting 'no'; Duvall and Krieser absent). See Minutes, p.11-12.

FACTSHEET PREPARED BY: Jean L. Walker

REVIEWED BY: _____

REFERENCE NUMBER: FS\CC\FSCZ3350

DATE: March 12, 2002

DATE: March 12, 2002

LINCOLN/LANCASTER COUNTY PLANNING STAFF REPORT

P.A.S.: Change of Zone #3350

DATE: January 9, 2002

PROPOSAL: To amend Sections 27.41.030, 27.41.040, 27.43.030, 27.43.040, 27.49.030, 27.49.040, and repealing Sections 27.63.700, 27.41.030, 27.41.040, 27.43.030, 27.43.040, 27.49.030 and 27.49.040 of the Lincoln Municipal Code (LMC) to allow the storage/display of vehicles for sale and resale on any portion of a lot where parking is permitted in the H-2, H-3 and I-2 zoning districts.

CONCLUSION: This amendment provides a greater setback and increased landscaping in comparison to CZ#3352. The setback and landscaping are consistent with the standards either being developed or under discussion for entry-way and public-way corridors.

RECOMMENDATION:

Approval with revisions

GENERAL INFORMATION:

APPLICANT: Kathleen A. Sellman, AICP
Planning Director
555 South 10th Street, Room 213
Lincoln, NE 68508

CONTACT: Brian Will
Planning Department
555 S. 10th Street, Room 213
Lincoln, NE 68508

PROPOSED TEXT CHANGES: Attached.

HISTORY: SP#1929 - An application for a special permit was submitted by Red Star Auto to park and display vehicles in the front yard at 702 West O Street, but included no landscaping between the display area and the property line. The application received recommendations for denial from the Planning Department and Planning Commission. The permit was approved by the City Council on October 22, 2001, but was subsequently vetoed by the Mayor on October 29, 2001.

In response to issues raised by SP#1929, the City Council directed City Staff to develop alternate revisions to the Zoning Ordinance to allow auto sales and display in the front yard without a special permit, but that included conditions that would provide land use compatibility. Consensus among City Council, the Mayor and City Staff had not been reached on the content and form of the revision when CZ#3352 was submitted by the Nebraska Independent Dealers Association.

CZ#3352 - This application was a text amendment submitted by the Nebraska Auto Dealers Association, with a public hearing before the Planning Commission on January 23, 2002. The amendment added Section 27.70.060 to allow the storage of vehicles for sale or resale in the B-3, H-2, H-3 and I-2 zoning districts on any portion of a required yard where parking is otherwise permitted, under certain conditions. Generally, these conditions are that the vehicle cannot be upon a raised structure, the hood or trunk will not be open, and the landscaping must be installed in accordance with the parking lot design standards. The provision allowing this use with a special permit remained to allow for requests for exceptions to the above noted conditions.

The applicant has since modified the amendment to delete those portions that affect the B-3 district, and to remove the special permit provisions. Another hearing before the Planning Commission is required due to these changes and the need for the amendment to be properly advertised.

ANALYSIS:

1. This amendment is a modified version of a concept originally prepared by Staff at the direction of City Council prior to CZ#3352 being submitted. It allows the storage/display of vehicles for sale or resale in the H-2, H-3 and I-2 zoning districts as a conditional use on any portion of a required yard where parking is otherwise permitted, under certain conditions. Generally, these conditions are that it can only be in the rear half of the front yard; that parking barriers be provided so cars do not overhang into the front half of the front yard; the vehicle cannot be upon a raised structure; the hood or trunk will not be open; and that any portion of the front yard not used for the storage of cars be devoted to trees, shrubs, and grass with a 60% screen from the ground to 2' above the surface of the lot.
2. Provisions for the I-2 zoning district were included to maintain consistency with CZ#3352, and so the same legal advertisement could be used for both. However, parking is already restricted in I-2 in a manner similar to that being proposed, so the amendment would have little actual impact. For this reason, proposed amendments affecting the I-2 zoning district can be deleted.
3. Currently, there are on-going processes to develop standards for both public-way and entry-way corridors. CZ#3350 was compared to the standards that have either been drafted or discussed in those processes to ensure that any revisions to LMC that affect setbacks, landscaping and design standards along major roadways not conflict with those standards. The setbacks and landscaping provided by this amendment are consistent, or at least do not conflict with, what have been proposed or discussed in the development of those standards thus far.
4. As noted previously, consensus among the Mayor, City Council and Staff had not been reached on the concept of this amendment when CZ#3352 was submitted by the Auto Dealers Association. During the interim, this amendment has been revised to satisfy concerns initially raised. Additionally, it was reviewed with the corridor standards in mind, and addresses the need for setbacks and landscaping that are consistent with what is known about those standards at this time. While the preferred alternative would be to include this in the on-going processes of developing corridor standards, the time-line for their completion has not been set

and adoption is not certain. Acknowledging the urgency to address the issues raised by the veto of SP#1929, this amendment provides an alternative that is not in conflict with adopted regulations or with what is known about standards that are being developed.

CONDITIONS:

1. Delete those sections affecting the I-2 zoning district.

Prepared by:

Brian Will, AICP
Planner

**CHANGE OF ZONE NO. 3350
and
CHANGE OF ZONE NO. 3352**

PUBLIC HEARING BEFORE PLANNING COMMISSION:

February 20, 2002

Members present: Newman, Hunter, Steward, Krieser, Taylor, Carlson and Schwinn; Bills and Duvall absent.

Staff recommendation: Approval of Change of Zone No. 3350, with revisions; and denial of Change of Zone No. 3352.

Brian Will of Planning staff submitted a letter from Ron Sisel in opposition to both applications.

1. Brian Will also advised that the staff has had several conversations with the applicant for Change of Zone No. 3352 and has met with the Lincoln Independent Auto Dealers Association and auto dealers on West "O" Street. At this time, the staff would propose a two week deferral. Will believes that a consensus among all parties has been reached and the intent of the two-week deferral is to bring the proposal forward as one ordinance which everyone has agreed upon.

2. Bill Austin, attorney for the applicants for Change of Zone No. 3352, acknowledged that he has spoken with the staff and that they have had several meetings in an attempt to agree upon a compromised proposal. He, too, believes they are in agreement and a two-week delay would allow the proposal to be put into a complete form for the Planning Commission review.

Carlson moved to defer, with continued public hearing and administrative action on March 6, 2002, seconded by Newman.

Hunter inquired about the fence that was put on the west side of the Red Star Auto property. Is it legal to put that fence that close to the street? Will indicated that it is legal for that zoning district. Hunter stated that the owner of Popeye's believes this fence was installed out of spite.

Steward suggested that in revisions to the text, the staff might consider using the word "permitted" as opposed to "utilized" on page 4, line 6 (v). Will concurred, advising that there will be some further text changes as this legislation comes back on March 6th. He agreed that there are some inconsistencies and grammatical changes that need to be made. In fact, the paragraph that Steward was referring to will be deleted in its entirety on the revised ordinance.

Newman noted that in the particular case on West "O" Street, Red Star Auto has double frontage on "P" and "O". Will this text amendment address situations like that? Will indicated that it would not. The intent of this proposal was to come up with standards for front yards only. If there is a concern beyond that, it could be done, but the intent here is to develop setbacks and landscape standards for any front yard in these zoning districts. He agreed that there are some unique circumstances but there are no provisions in this legislation for anything other than the front yard.

Newman also pointed out that an auto dealer on East "O" Street has cars parked right up to the sidewalk with every single hood open. Does this legislation apply to all auto dealerships? Will explained that this legislation would apply to those dealerships within the H-2, H-3 and I-2 zoning districts. Austin suggested that it may be necessary to investigate whether or not any of those individuals have grandfather rights out on East "O" Street because the zoning was just changed in 1979. The grandfather rights continue unless the use is discontinued. Will further explained that this ordinance provides that those uses that are lawfully established will become nonconforming and will be allowed to continue to exist.

Austin believes they can resolve the fence issue at Popeye's.

Opposition

1. Craig Groat testified in opposition. He recited from Standard & Poors indicating that economic development would be better off by focusing on improving quality of life, and aesthetics are the primary element of quality of life. Our zoning regulations were put in many years ago when we had business people that felt attached to our city and were concerned about our city. It seems now these days that too many of our business people are more concerned about their individual goals as opposed to the community. He referred to Misle Chevrolet as a bad example. Our national economy is changing. The Educational Testing Service study shows change from light industrial to an office economy. We need to bring quality employers into our city. Because of some of things that have been done by our business community, we have come down to having a second class city. Something like this (parking autos for sale in the front yard) puts another nail in the coffin of our city becoming a quality city. Laws play a vital role in maintaining a social order. He does not believe that the laws should be allowed to be violated or changed because everyone else is violating them.

2. Ron Sisel, 1010 West "P" Street, testified in opposition. He wants to know the cost to purchase accessory right-of-way from the city. What most concerns him is the fact that this was such a back door sequence of events without public notice. Sisel purports that a sign must be posted for 30 days on every site that will be affected by this text amendment. This is the only way you are going to get any public input. You're trying to get this setback for some minimal landscaping. The waiver is still in place and they are all writing their application so that they don't have to do any landscaping. 60% landscaping is minimal, amounting to half a dozen bushes and a couple flower beds. What kind of precedent is being set when there is a mass violation? It is time to stop giving away public rights and safety to businesses with little or nothing in return.

Sisel submitted photographs of parking lot lights that are mounted on West "O" Street that are not properly installed and are not effective. He wants lighting concessions from these car lots. He suggested that we must trade setbacks for some type of lighting controls that will be an immediate positive effect for those who live near these sites.

These applications will have continued public hearing on March 6, 2002.

Members present: Steward, Carlson, Bills-Strand, Taylor, Newman and Schwinn; Duvall and Krieser absent.

Proponents

1. Brian Will of Planning staff submitted a memo from the Building & Safety Department in response to questions raised by Patte Newman regarding the properties that will be affected by this change and how the ordinance will be enforced.

If this ordinance is approved, it is Steward's understanding that any used or new automotive company in the entire city will be able to reduce whatever was their legal circumstance before down to 6'. Will acknowledged that to be true, unless they have a previously approved special permit. As far as the ones that are in our vision, Steward suggested that it would only be a few that would not be affected. Will concurred.

Will went on to state that at the last hearing, the staff had asked for some additional time to continue working with the applicant for Change of Zone No. 3352. The original direction from the City Council was to develop some alternatives to accomplish the conditional use and develop some sort of standards that would be agreeable to both the city and the applicant for Change of Zone No. 3352. In the interim, the staff and the proponents for Change of Zone No. 3352 have reached agreement, which is the revised proposal for Change of Zone No. 3350. In general terms, the real point of contention between the city's proposed amendment and that of the applicant for Change of Zone No. 3352, was the amount of setback from the property line dedicated to landscaping. Originally, when staff started working on developing the amendment, the first proposal contained a setback of 5'. In going through the process of reviewing that amendment, that proposal was amended to allow parking in the rear half of the front yard, resulting in a 15' setback. Staff then met with the affected property owners, which has resulted in the amendment being proposed today whereby the setback is a 6' buffer from the front property line dedicated to landscaping. The other two changes are changes merely to clarify the standards for landscape materials.

Will also stated that the staff proposes to delete the I-2 district from the proposal as a conditional use. It was merely left in because it had been advertised and included in previous amendments to the staff report. The reason the I-2 should be deleted is that the required setback in I-2 is 25', so this would have no bearing or change on the I-2, and there is a minimal number of properties around the city that would be affected. This boils down to the H-2 and H-3 districts as a conditional use.

Carlson confirmed that there is now an existing condition of a 30' setback with no parking. Will acknowledged that the provision in the H-3 ordinance is 30'; however, parking in the front yard is allowed with a special permit. Carlson sought then to clarify that the staff proposal suggested 15' and now the compromise is 6'. Will concurred.

2. Bill Austin of Erickson & Sederstrom appeared on behalf of the applicants for Change of Zone No. 3352. He expressed concurrence with the compromise that has been reached on Change of Zone No. 3350. He clarified that this has no effect on any car dealer that is currently, or in the future, located in

the B-1, B-2, B-3 or B-4, H-1 or H-4, and once finally amended it will have no effect on a car located in I-1 or I-2. It is limited to those districts that are intended for high visibility uses.

With regard to the 6' compromise, Austin advised the Commission one of the things that drove the compromise was how much the setback should be in light of what the city is currently considering as corridor protection for entryways to the cities. It is his understanding that the city is looking at something that would require a 6' setback. To be consistent and in anticipation of that type of regulation for entryways, Austin has agreed that 6' would be appropriate. There are significant provisions regarding the landscaping of that area to assure that this will be an effective use of the property in these districts. Austin fully agreed with the compromise and expressed appreciation to the administration for the willingness to work this out.

For the record, in light of the revisions made to Change of Zone No. 3350, William Austin formally withdrew Change of Zone No. 3352. He also submitted letters from the West O Area Business Association and the Nebraska Independent Auto Dealers Association in support of the compromise.

3. Karl Jensvold, 650 West "O" Street, current president of the West "O" Area Business Association, appeared in support of the compromise. The Association consists of 61 members. They voted on this legislation with 22 members present, 6 being car dealers, with unanimous vote in support. The most productive part of this process was the opportunity to meet with the city staff to work through this legislation. 6' was not just pulled out of the hat. It was discussed fully. The landscape requirements will fall in line with the West "O" beautification project.

Opposition

1. Ron Sisel, 1010 West "P" Street, testified in opposition and submitted his testimony in writing. He believes that this concession was achieved by a coordinated mass violation by auto dealers of existing city codes and statutes in the face of public well-being and safety. It was a concession that was orchestrated to take place just weeks before modern design standards could emerge from the pipeline of city agencies and have a positive effect on our major urban transportation corridors. The 30' setback is space allowed for the public's safety of movement, aesthetic well-being of all and many yet unknown future needs. Endless rows of bumpers are not a new form of urban beautification. This action dumps another layer of visual blight on these older areas. Auto lots should no longer be allowed to victimize those within the 300 yard range of their 1000 watt, metal halide, whitest of white, uncontrolled glaring luminaries. This action does not deserve any support.

2. Craig Groat, recited from Standard & Poors rating about quality of life. It is irresponsible to make these changes as proposed. These regulations were made when we had responsible members of this business community. As the office economy has risen the industrial economy has fallen. In order to encourage quality companies to come to Lincoln, the last thing we want to do is hurt our aesthetics. He also recited from the AICP/APA Ethical Principles in Planning regarding serving the public interests and conserving the heritage of the built environment. The city is unable to enforce many of the regulations, including Weed Control; however, the regulations can be upheld in a court of law. Aesthetics do relate to public health, safety and welfare. There is judicial recognition that aesthetic zoning can be reasonable and valid. Aesthetic considerations alone may warrant an exercise of police power.

Groat called for the appointment of an aesthetics commission or community beautification advisory commission be put into effect before anything like this is even considered.

Groat believes that this city has absolutely refused to enforce the parking regulations in the parking lot next to him. He has made repeated complaints. You wouldn't let your child use the excuse of everyone else is doing it, and these car dealers should not be allowed to do the same. He displayed photographs from Atlanta as an example of what you can have with aesthetic regulations. He also showed photographs of auto dealer businesses along West "O" Street, East "O" Street and Cornhusker Highway.

It would be grossly irresponsible to pass this legislation and would be in direct violation of the Code of Ethics.

3. Walt Hutchison, owner of Popeye's Chicken, testified in opposition. When Mr. Cornell (Red Star Auto) came to talk to him the first time, they discussed the situation on parking and he thought they got along well. Hutchison believes that there should be an access road because that is what they had agreed upon and the Popeye's Chicken building was set back. Cornell did not want to do that and Hutchison's attorney said he had to maintain a 30' setback. He is fearful that there will be car lots on both sides of his business. It would put Popeye's in the middle of a car lot. Hutchison submitted a copy of the drawing that Cornell submitted to the city for building permit approval in which Cornell agreed to the 30' setback. Now, he's protesting and he is the person that brought this all up. Now, this 30' becomes 6'. He also showed a photograph of the fence Cornell installed that obliterates the Popeye's sign. He displayed a picture of Car Hop which maintains the 30' setback.

Hutchison pleaded with the Commission because his family has invested everything they have in Popeye's. It took them 17 years to make it profitable. If 15% of Popeye's business is taken away because their visibility goes away, Hutchison and his family go back to nothing. He believes he could live with 15', but 6' is nothing. This has been a railroad job from the beginning. He was a member and vice-president of the West "O" Area Business Association and he was there the day all the car dealers showed up with their membership fee and they were there to eliminate the setback. At the next meeting, all of the officers were voted out and they put in all their own people. A lot of the projects that were planned for West "O" have gone away and will not happen because of this change.

Groat added that this is a federal highway and he believes there may be a federal regulations against this.

Staff questions

Steward asked Mike Merwick, the Director of Building & Safety, to clarify the memo indicating the impact on the existing other properties and Building & Safety's intent or interpretation of enforcement circumstances. Steward noted that throughout the several hearings the Commission has had, there have been comments made that even though we have standards they are not well enforced. If this is H-2 and H-3 primarily, to what extent throughout the city are we actually creating worse conditions than

we have from existing businesses? Merwick stated that the Building & Safety Department responds to complaints as they get them. If this ordinance is passed, the Building & Safety Department would propose to go to the businesses that are affected and work with them to get compliance. Once they are in compliance, Building & Safety will work with them on a complaint basis in the future.

Steward commented that there might be some dealers that were so far out of compliance that a 6' setback might be an improvement. Merwick concurred. Steward believes the reverse could also be the case. Merwick concurred with that as well.

Steward asked staff to respond to the order of magnitude of impact of this ordinance within the city. Will stated that the staff has not done a count. Generally, the understanding is that there are more car lots that don't meet the current standard or don't have the setback than have landscaping in excess of what is being required. But, Steward suggested that many of those might not be in an H-2 or H-3 zoning district. Will concurred, and those would not be impacted. Steward wants an impression of what the H-2 and H-3 impacts. Will stated that in general terms, the impact would not be that great. He is not aware of that many properties that have landscaping in excess of what would be required.

Schwinn inquired about the open hoods, doors and trunks. Will explained that if the cars are parked within the required yard in H-2 and H-3 as a conditional use, the hoods, trunks and doors would not be allowed to be open. The hoods are allowed to be open if the cars are parked 30' back.

Newman inquired about lighting requirements. Will indicated that the city design standards do have lighting standards; however, this is not treated as a parking lot and the lighting standards do not apply. Newman believes this would be a good place to also regulate the kind of lighting that they would be allowed to have. Will agreed but the staff had not identified that as a need that should be addressed. Schwinn pointed out that the lighting requirements have been conditions of special permits but this change takes away the special permit process.

Bill Austin addressed the comments about the composition of the West "O" Area Business Association. This is a group that consists of 61 members, only 9 of whom are used car dealers. At their last meeting, 22 members showed up, 4 of whom were used car dealers, and they voted to approve this compromise. This is not a group composed of only used car dealers. It is a responsible group of individuals interested in West "O" Street. As for as the use of Association funds for attorney fees, Austin stated that it would have to be an attorney other than he because his fee is not coming from the Business Association. As to the pictures that were shown by the opposition (Mr. Hutchison), Austin suggested that those pictures have nothing to do with what goes on in highway and industrial districts. The pictures did not designate the zoning district that is in place. With regard to the fence referred to by Hutchison, that fence was put up for a number of reasons, but it is a perfectly legal fence. It is exactly what is permitted in that district. But with this compromise, that fence will be removed from the front yard. In addition, Austin pointed out that these dealers will still be 34' back from the traveled portion of the road. There is a 28' wide right-of-way on West "O" Street, in addition to the 6' front yard setback. It will provide enough visibility for the abutting property owner who would have been subjected to obstructions in any event, and to a greater extent if the businesses had elected to use the property for other uses where they could have put in a parking lot or used the area for customer parking.

Austin believes this is a reasonable compromise and has been a give and take.

Public hearing was closed.

CHANGE OF ZONE NO. 3350

ADMINISTRATIVE ACTION BY PLANNING COMMISSION:

March 6, 2002

Carlson moved to approve the revised staff recommendation, with amendment for “one-half of the front yard setback” (12.5' to 15') as opposed to 6'. This changes it back to the previous staff recommendation. The motion was seconded by Newman.

Newman made a motion to amend to include the parking lot lighting design standards, seconded by Steward and carried 6-0: Steward, Carlson, Bills-Strand, Taylor, Newman and Schwinn voting ‘yes’; Krieser and Duvall absent.

Steward stated that he will vote against the main motion. He believes this is an improvement, but he is more concerned about a) the precedent, and b) the fact that we are losing the special permit capability to deal with adjacencies and other incompatible uses or other dissimilar zoning, i.e. residential. Almost every one of these areas in town are adjacent to residential areas. He does not like the idea that we are restricted in our corridor entryway conditions. A 6' setback is minimal. He is opposed to the entire premise. It's H-2 and H-3, and there may be only a few properties affected, but he can guarantee that anyone in another commercial use zone will be right in here in front of us asking for the same setback privilege. He does not believe it is a good aesthetic decision.

Carlson acknowledged that this is an issue with competing interests. He is not disagreeing with anything Steward mentioned. Eliminating the special permit provides additional protections, and there may be rationale for reducing the setback from 30', but he knows reducing it to 6' is not the answer. Maybe 15' or one-half of the front yard is a compromise, but 6' is not.

Newman agreed with Steward. We do not know what we're dealing with and we don't know what the numbers are. We are creating an ordinance for a number of people that we can't even put a finger on. She is happy to deny this at this time. One of her original concerns was actual frontage of a lot. In a situation like Popeye's, there needs to be a sight distance where you can see all the things that you need to see, and she does not see it reflected here.

Schwinn has real mixed feelings. On one hand he feels like if your customers can park there, you probably should be able to park the cars for sale. But he thinks about Mid City Toyota who was in H-1 for 30 years--they never parked closer than the setback, were always in compliance and never had a shortage of buyers. He likes the addition of the lighting standards. When in compliance, Red Star Auto is probably one of the nicer looking

auto dealers on O Street. Schwinn is also not sure the Popeye's sign is that important. He will vote in favor but he is not completely convinced.

Taylor agreed with Steward. He has had problems with this and was going to go along with it at first, but he agrees with Steward's comments.

Motion for approval, with amendment from 6' to "one-half of the front yard setback" and with amendment adding lighting standards, failed 2-4: Carlson and Schwinn voting 'yes'; Steward, Bills-Strand, Newman and Taylor voting 'no'; Duvall and Krieser absent.

Steward moved to deny, seconded by Newman and carried 5-1: Steward, Carlson, Bills-Strand, Taylor and Newman voting 'yes'; Schwinn voting 'no'; Duvall and Krieser absent.

CHANGE OF ZONE NO. 3352:

March 6, 2002

Application verbally withdrawn by the William Austin on behalf of the applicant during public hearing.

ORDINANCE NO. _____

1 AN ORDINANCE amending Title 27 of the Lincoln Municipal Code by
 2 amending Section 27.33.040 to delete subparagraph (m) to delete the storage of vehicles
 3 for sale and resale in the B-3 Commercial District on any portion of the lot where parking
 4 is permitted; amending Section 27.41.030 of the Lincoln Municipal Code to add a
 5 subparagraph (g) to provide conditions regarding the storage/display of vehicles for sale
 6 and resale in the H-2 Highway Business District when located on any portion of the lot
 7 where parking is permitted; amending Section 27.41.040 to delete subparagraph (m) to
 8 delete the storage of vehicles for sale and resale in the H-2 zoning district on any portion
 9 of the lot where parking is permitted; amending Section 27.43.030 of the Lincoln Municipal
 10 Code to revise subparagraph (k) to provide additional conditions regarding the
 11 storage/display of vehicles for sale and resale in the H-3 Highway Commercial District
 12 when located on any portion of a lot where parking is permitted, and amending Section
 13 27.43.040 to delete subparagraph (q) to delete the storage of vehicles for sale and resale
 14 in the H-3 zoning district on any portion of a lot where parking is permitted as a special
 15 permitted use; amending Section 27.49.040 to delete subparagraph (j) to delete the
 16 storage of vehicles for sale and resale in the I-2 zoning district on any portion of the lot
 17 where parking is permitted; repealing Section 27.63.700 of the Lincoln Municipal Code
 18 relating to special permits for the storage of vehicles for sale where parking is permitted;
 19 and repealing Sections 27.33.040, 27.41.030, 27.41.040, 27.43.030, 27.43.040, and
 20 27.49.040 of the Lincoln Municipal Code as hitherto existing.

21 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

22 Section 1. That Section 27.33.040 of the Lincoln Municipal Code be
 23 amended to read as follows:

1 **27.33.040 Permitted Special Uses.**

2 A building or premises may be used for the following purposes in the B-3
3 Commercial District if a special permit for such use has been obtained in conformance with
4 the requirements of Chapter 27.63:

- 5 (a) Health care facilities;
- 6 (b) Recreational facilities;
- 7 (c) Church steeples, towers, and ornamental spires which exceed the maximum
8 district height;
- 9 (d) Broadcast towers;
- 10 (e) Expansion of nonconforming use;
- 11 (f) Historic preservation;
- 12 (g) Public utility purposes;
- 13 (h) Wind energy conversion systems;
- 14 (i) Cemeteries;
- 15 (j) Dwellings above the first story of a building which cannot meet the yard
16 requirements of Section 27.33.080(g);
- 17 (k) Sale of alcoholic beverages for consumption on the premises;
- 18 (l) Sale of alcoholic beverages for consumption off the premises;
- 19 ~~—— (m) Storage of vehicles for sale and resale on any portion of the lot where parking~~
20 ~~is permitted.~~

21 Section 2. That Section 27.41.030 of the Lincoln Municipal Code be
22 amended to read as follows:

23 **27.41.030 Permitted Conditional Uses.**

24 A building or premises may be used for the following purposes in the H-2 Highway
25 Business District in conformance with the conditions prescribed herein:

- 26 (a) Automobile/truck wash facility:
 - 27 (1) Automatic, conveyor-operated: The length and location of vehicle
28 stacking lane or lanes for the approach side or sides and the exit side or sides of the wash
29 operation shall be in conformance with the "guidelines and regulations for driveway design
30 and location" as adopted by the City of Lincoln.

1 (2) Self-service, coin-operated: The wash facility shall not exceed six
2 wash bays. The length and location of vehicle stacking lane or lanes for the approach side
3 or sides and the exit side or sides of the wash operation shall be in conformance with the
4 "guidelines and regulations for driveway design and location" as adopted by the City of
5 Lincoln.

6 (b) Motels and hotels: A distance of at least twenty feet shall be maintained
7 between buildings on the lot, and each hotel or motel unit shall have a minimum enclosed
8 floor area of 200 square feet.

9 (c) Service facilities, including but not limited to repair and maintenance of home
10 and office equipment, electrical appliances, radio and television sets, and rental equip-
11 ment; and the places of business of plumbing, electrical, and heating and air conditioning
12 contractors.

13 All storage and display of merchandise shall be screened from public view by a
14 fence, walls, shrubs, material obstruction, or all such storage and display shall be within
15 the enclosure walls of a building.

16 (d) Early childhood care facilities:

17 (1) Such facilities shall comply with all applicable state and local early
18 childhood care requirements;

19 (2) Such facilities shall comply with all applicable building and life safety
20 code requirements;

21 (3) Such facilities shall be fenced and have play areas that comply with
22 the design standards for early childhood care facilities;

23 (4) Such facilities must receive a conditional use permit from the
24 Department of Building and Safety.

25 (e) Recycling center:

26 (1) Building area of such center shall not exceed 8,000 square feet;

27 (2) Adequate traffic stacking shall be provided on site as determined by
28 the city;

29 (3) All required parking shall be provided on site;

1 (4) The facility shall not be designed to receive nor shall it accept
2 shipments by semi-trailer trucks;

3 (5) Construction and operation of such center shall comply with all
4 applicable health and fire codes.

5 (f) Vehicle body repair shop:

6 (1) All salvage material including vehicles being salvaged shall be inside
7 a building;

8 (2) All vehicles stored outside shall be repaired to an operating state
9 within thirty days;

10 (3) All vehicles stored outside waiting repair shall be screened in
11 accordance with the screening requirements for salvage and scrap processing operations;

12 (4) Construction and operation of such shop shall comply with all
13 applicable health and fire codes;

14 (5) Vehicle body repair shops lawfully existing on the effective date of this
15 ordinance shall have until January 1, 1987 to be brought into compliance with conditions
16 (1), (2), (3), and (4) above.

17 (g) The storage of vehicles for sale and resale in the front yard:

18 (1) The storage of vehicles for sale and resale is permitted in the front
19 yard except for the front six feet.

20 (2) Parking barriers in accordance with parking lot design standards must
21 be provided around the storage/display area to prevent the vehicles stored/displayed for
22 sale or resale from overhanging the front six feet of the front yard where vehicles are not
23 permitted to be stored/displayed for sale or resale.

24 (3) No vehicle shall be stored/displayed for sale or resale in the front yard
25 upon a raised concrete island or on a raised display structure.

26 (4) The hood or trunk or both of vehicles stored/displayed for sale or
27 resale in the front yard shall not be open except when inspected by a customer or for
28 servicing.

1 (5) The front six feet of the front yard not permitted to be used for the
2 storage of vehicles for sale and resale shall not be used for customer or employee parking
3 but shall be devoted to shrubs and grasses.

4 (6) The front six feet of the front yard not permitted to be used for the
5 storage of vehicles for sale and resale shall be screened at least sixty percent from zero
6 feet to two feet above the surface of the lot. The design and construction of the
7 landscaping shall be in conformance with the Design Standards for Screening and
8 Landscaping except that fences may not be used to meet the above screening
9 requirements. If plant material is used, the density percentage is calculated using the
10 design size found in the City of Lincoln's plant material list approved by the Planning
11 Director. The screen shall be located throughout the area but far enough from the barrier
12 so as to be protected from the bumpers of overhanging vehicles. Entrance driveways shall
13 be excluded from the required screen.

14 (7) No fence shall be erected in the front yard.

15 (8) Any existing automobile sales facility lawfully established on the
16 effective date of this ordinance which does not comply with conditions (1) through (7)
17 above may be continued in accordance with the provisions of Chapter 27.61 for
18 nonconforming uses.

19 Section 3. That Section 27.41.040 of the Lincoln Municipal Code be
20 amended to read as follows:

21 **27.41.040 Permitted Special Uses.**

22 A building or premises may be used for the following purposes in the H-2 Highway
23 Business District if a special permit for such use has been obtained in conformance with
24 the requirements of Chapter 27.63:

- 25 (a) Outdoor theaters;
- 26 (b) Broadcast towers;
- 27 (c) Extraction of sand, gravel, and soil;
- 28 (d) Church steeples, towers, and ornamental spires exceeding the maximum
29 permitted height of the H-2 Highway Business District;
- 30 (e) Outdoor lighting for recreational facilities;

- 1 (f) Expansion of nonconforming uses;
- 2 (g) Historic preservation;
- 3 (h) Public utilities purposes;
- 4 (i) Wind energy conversion systems;
- 5 (j) Cemeteries;
- 6 (k) Sale of alcoholic beverages for consumption on the premises;
- 7 (l) Sale of alcoholic beverages for consumption off the premises;
- 8 (m) ~~Storage of vehicles for sale and resale on any portion of the lot where~~
- 9 ~~parking is permitted;~~
- 10 ~~(n) Sexually oriented live entertainment establishments.~~

11 Section 4. That Section 27.43.030 of the Lincoln Municipal Code be
12 amended to read as follows:

13 **27.43.030 Permitted Conditional Uses.**

14 A building or premises may be used for the following purposes in the H-3 Highway
15 Commercial District in conformance with the conditions prescribed herein:

- 16 (a) Automobile/truck wash facility:

17 (1) Automatic, conveyor-operated: The length and location of vehicle
18 stacking lane or lanes for the approach side or sides and the exit side or sides of the wash
19 operation shall be in conformance with the "guidelines and regulations for driveway design
20 and location" as adopted by the City of Lincoln.

21 (2) Self-service, coin-operated: The length and location of vehicle
22 stacking lane or lanes for the approach side or sides and the exit side or sides of the wash
23 operation shall be in conformance with the "guidelines and regulations for driveway design
24 and location" as adopted by the City of Lincoln.

25 (b) Motels and hotels: A distance of at least twenty feet shall be maintained
26 between buildings on the lot and each hotel or motel unit shall have a minimum enclosed
27 floor area of 200 square feet.

1 (c) Early childhood care facilities:

2 (1) Such facilities shall comply with all applicable state and local early
3 childhood care and building requirements;

4 (2) Such facilities shall comply with all applicable building and life safety
5 code requirements;

6 (3) Such facilities shall be fenced and have play areas that comply with
7 the design standards for early childhood care facilities;

8 (4) Such facilities must receive a conditional use permit from the
9 Department of Building and Safety.

10 (d) Recycling center:

11 (1) Building area of such center shall not exceed 8,000 square feet;

12 (2) Adequate traffic stacking shall be provided on site as determined by
13 the city;

14 (3) All required parking shall be provided on site;

15 (4) The facility shall not be designed to receive nor shall it accept
16 shipments by semi-trailer trucks;

17 (5) Construction and operation of such center shall comply with all
18 applicable health and fire codes.

19 (e) Vehicle body repair shop:

20 (1) All salvage material including vehicles being salvaged shall be inside
21 a building;

22 (2) All vehicles stored outside shall be repaired to an operating state
23 within thirty days;

24 (3) All vehicles stored outside waiting repair shall be screened in
25 accordance with the screening requirements for salvage and scrap processing operations;

26 (4) Construction and operation of such shop shall comply with all
27 applicable health and fire codes;

28 (5) Vehicle body repair shops lawfully existing on the effective date of this
29 ordinance shall have until January 1, 1987 to be brought into compliance with conditions
30 (1), (2), (3), and (4) above.

1 (6) Parking shall be provided in accordance with Section 27.67.066.

2 (7) Vehicle body repair shops shall not be converted to a permitted use
3 unless all the parking requirements of Section 27.67.020 for such use are met.

4 (f) Truck and heavy equipment sales:

5 (1) Parking shall be provided in accordance with Section 27.67.066.

6 (2) Truck and heavy equipment sales shall not be converted to a
7 permitted use unless all the parking requirements of Section 27.67.020 for such use are
8 met.

9 (g) Farm machinery sales establishments:

10 (1) Parking shall be provided in accordance with Section 27.67.066.

11 (2) Farm machinery sales establishments shall not be converted to a
12 permitted use unless all the parking requirements of Section 27.67.020 for such use are met.

13 (h) Motor truck terminals:

14 (1) Parking shall be provided in accordance with Section 27.67.066.

15 (2) Motor truck terminals shall not be converted to a permitted use unless
16 all the parking requirements of Section 27.67.020 for such use are met.

17 (i) Mobile home sales:

18 (1) Parking shall be provided in accordance with Section 27.67.066.

19 (2) Mobile home sales shall not be converted to a permitted use unless
20 all the parking requirements of Section 27.67.020 for such use are met.

21 (j) Places of business of plumbing contractors, heating and air conditioning
22 contractors, and cabinet shops:

23 (1) Parking shall be provided in accordance with Section 27.67.066.

24 (2) Said places of business shall not be converted to a permitted use unless
25 all the parking requirements of Section 27.67.020 for such use are met.

26 (k) Automobile sales and repair, but not including vehicle body repair shops:

27 (1) Parking shall be provided in accordance with Section 27.67.066.

28 (2) The storage of vehicles for sale and resale is permitted in the front
29 yard under the following conditions:

1 (i) The storage of vehicles for sale and resale is permitted in the
2 front yard except for the front six feet.

3 (ii) Parking barriers in accordance with parking lot design
4 standards must be provided around the storage/display area to prevent the vehicles
5 stored/displayed for sale or resale from overhanging the front six feet of the front yard
6 where vehicles are not permitted to be stored/displayed for sale or resale.

7 (iii) No vehicle shall be stored/displayed for sale or resale in the
8 front yard upon a raised concrete island or on a raised display structure.

9 (iv) The hood or trunk or both of vehicles stored/displayed for sale
10 or resale in the front yard shall not be open except when inspected by a customer or for
11 servicing.

12 (3) The front six feet of the front yard not permitted to be used for the
13 storage of vehicles for sale and resale shall not be used for customer or employee parking
14 but shall be devoted to shrubs and grasses.

15 (4) The front six feet of the front yard not permitted to be used for the
16 storage of vehicles for sale and resale shall be screened at least sixty percent from zero
17 feet to two feet above the surface of the lot. The design and construction of the
18 landscaping shall be in conformance with the Design Standards for Screening and
19 Landscaping except that fences may not be used to meet the above screening
20 requirements. If plant material is used, the density percentage is calculated using the
21 design size found in the City of Lincoln's plant material list approved by the Planning
22 Director. The screen shall be located throughout the area but far enough from the barrier
23 so as to be protected from the bumpers of overhanging vehicles. Entrance driveways shall
24 be excluded from the required screen.

25 (5) No fence shall be erected in the front yard.

26 (6) Any existing automobile sales facility lawfully established on the
27 effective date of this ordinance which does not comply with conditions (1) through (5)
28 above may be continued in accordance with the provisions of Chapter 27.61 for
29 nonconforming uses.

1 (27) Automobile sales and repair shops shall not be converted to a
2 permitted use unless all the parking requirements of Section 27.67.020 for such use are
3 met.

4 (l) Assembly facilities, including but not limited to the assembly of equipment,
5 instruments and appliances such as computers and musical instruments.

6 (1) Assembly facilities may include limited fabrication of finished parts to
7 be used in such assembly.

8 (2) The floor area of such facilities shall not exceed 50,000 square feet.

9
10 (3) Parking shall be provided in accordance with Section 27.67.066.

11 (4) Assembly facilities shall not be converted to a permitted use unless
12 all the parking requirements of Section 27.67.020 for such use are met.

13 Section 5. That Section 27.43.040 of the Lincoln Municipal Code be
14 amended to read as follows:

15 **27.43.040 Permitted Special Uses.**

16 A building or premises may be used for the following purposes in the H-3 Highway
17 Commercial District if a special permit for such use has been obtained in conformance with
18 the requirements of Chapter 27.63:

- 19 (a) Extraction of sand, gravel, and soil;
- 20 (b) Bulk storage of petroleum products;
- 21 (c) Broadcast towers;
- 22 (d) Church steeples, towers, and ornamental spires exceeding the maximum
23 permitted height in the H-3 Highway Commercial District;
- 24 (e) Outdoor lighting for recreational facilities;
- 25 (f) Expansion of nonconforming use;
- 26 (g) Historic preservation;
- 27 (h) Stores and shops for retail sales and service which exceed 20,000 square
28 feet of floor area;
- 29 (i) Public utility purposes;
- 30 (j) Wind energy conversion systems;

- 1 (k) Small batch concrete dispensing units;
- 2 (l) Health care facilities;
- 3 (m) Cemeteries;
- 4 (n) Sale of alcoholic beverages for consumption on the premises;
- 5 (o) Sale of alcoholic beverages for consumption off the premises;
- 6 (p) Limited landfills;
- 7 (q) ~~Storage of vehicles for sale and resale on any portion of the lot where~~
- 8 ~~parking is permitted;~~
- 9 ~~——(r)——Sexually oriented live entertainment establishments.~~

10 Section 6. That Section 27.49.040 of the Lincoln Municipal Code be
 11 amended to read as follows:

12 **27.49.040 Permitted Special Uses.**

13 A building or premises may be used for the following purposes in the I-2 Industrial
 14 Park District if a special permit for such use has been obtained in conformance with the
 15 requirements of Chapter 27.63:

- 16 (a) Mining, quarrying, and stone mills;
- 17 (b) Broadcast towers;
- 18 (c) Early childhood care facilities;
- 19 (d) Expansion of nonconforming use;
- 20 (e) Historic preservation;
- 21 (f) Wind energy conversion systems;
- 22 (g) Enclosed disassembly operation in conformance with Section 27.63.500;
- 23 (h) Sale of alcoholic beverages for consumption on the premises;
- 24 (i) Any permitted use which exceeds the maximum height permitted in the
- 25 district;
- 26 (j) ~~Storage of vehicles for sale and resale on any portion of the lot where~~
- 27 ~~parking is permitted;~~
- 28 ~~——(k)——Sexually oriented live entertainment establishments.~~

29 Section 7. That Section 27.63.700 of the Lincoln Municipal Code be and the
 30 same is hereby repealed:

1 **~~27.63.700 Permitted Special Use: Storage of Vehicles for Sale Where Parking is~~**
2 **~~Permitted:~~**

3 ~~—— The storage of vehicles for sale and resale in the B-3, H-2, H-3, and I-2 zoning~~
4 ~~districts may be permitted upon any portion of the lot where parking is permitted. Any area~~
5 ~~in a required front yard used for such storage of vehicles must conform to the parking lot~~
6 ~~design standards unless specifically adjusted or waived by the City Council.~~

7 Section 8. That Sections 27.33.040, 27.41.030, 27.41.040, 27.43.030,
8 27.43.040, and 27.49.040 of the Lincoln Municipal Code as hitherto existing be and the
9 same are hereby repealed.

1
2

Section 9. That this ordinance shall take effect and be in force from and after its passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Staff Review Completed:

Administrative Assistant

Approved this ___ day of _____,
2002:

INTER-DEPARTMENT COMMUNICATION
Building & Safety Department

TO	Planning Commission	DATE	March 4, 2002
DEPARTMENT	Planning	FROM	Mike Merwick, Director
COPIES TO	Mayor's Office Rick Peo, Law Dept. Brian Will, Planning Mel Goddard, B&S File	DEPARTMENT	Building & Safety
		SUBJECT	Changes of Zones

Planning has asked Building & Safety to answer two questions raised by the Planning Commission on the two change of zones cz3350-cz3352.

Building & Safety reviewed past zoning regulations and it appears that substantially all locations would benefit from the proposed 6 feet setback. Setbacks were 10 feet to 20 feet in the past. The Special Permit approved for Anderson Ford allowed a 3 feet setback and would be allowed to continue as a non-standard use.

Any business that says they have a lawful pre-existing non-conforming use or non-standard use would have to prove it.

Should the proposed changes take place Building & Safety will contact each business and explain the new regulations. After the initial contact and compliance any future enforcement would be on a complaint basis.

The penalty for a violation would be set by a Judge after a trial. The maximum fine is \$100.00, however each day that a violation continues, may be punishable as a separate offense. In addition the City Attorney is allowed to institute injunction proceedings in the District Court to abate the unlawful use of the property.

KREKMC\mm-planning.memo

Request for Information
To: Planning Department

Date: 2/20/02

Agenda Item No.: 3.1 / 3.2 Title: change of zone C23350
C23352

Action or Additional Information Requested:

How many properties will NOT be affected by this change —
i.e. how many locations are already grandfathered in
& therefore immune to these regulations?

Just for info... how are these laws enforced &
what is penalty - if any?

By: fake

Please submit your request to Jean Uhrmacher following the Planning Commission meeting.

MEMORANDUM

TO: Planning Commission
FR: Brian Williams Planning Department
DT: February 27, 2002
RE: Change of Zone #3350 - Sale/Display of Autos in the Front Yard

Attached is the revised amendment to Lincoln Municipal Code (LMC) Title 27 relating to parking autos for sale/display in the front yard. As noted during the February 20, 2002 public hearing on this item, a continuation of the public hearing was requested to allow time for City staff and the applicant of CZ#3352 to reach agreement on the conditions under which autos could be parked in the front yard for sale/display. A meeting with the applicant and affected representatives was held and the revised amendment represents the agreement reached at that meeting.

The substantive changes from the version previously distributed to the Planning Commission and the attached amendment are as follows:

1. Amends sub-paragraph (g)(1) (found on page 3 of the previous draft, and page 4 of the current draft) from "in the rear one-half of the front yard under the following conditions" to "in the front yard except for the front six feet."
2. Deletes sub-paragraph (g)(1)(V) (found on page 4 of the previous draft), and replaces it with language requiring compliance with the Design Standards for Screening and Landscaping and the City's plant material list in sub-paragraph (g)(6) (begins on page 4 and continues on page 5 of the current draft).
3. Amends sub-paragraph (g)(3) (found on page 4 of the previous draft) from "Entrance driveways and the required open space for sight distance associated with intersections and driveways shall be excluded from the required screen" to "Entrance driveways shall be excluded from the required screen."

The recommendation for approval from the previous staff report for CZ#3350 remains the same along with the condition that the provisions affecting the I-2 district be deleted.

02-

Introduce:

ORDINANCE NO. _____

1 AN ORDINANCE amending Title 27 of the Lincoln Municipal Code by
 2 amending Section 27.33.040 to delete subparagraph (m) to delete the storage of vehicles for
 3 sale and resale in the B-3 Commercial District on any portion of the lot where parking is
 4 permitted; amending Section 27.41.030 of the Lincoln Municipal Code to add a subparagraph
 5 (g) to provide conditions regarding the storage/display of vehicles for sale and resale in the H-2
 6 Highway Business District when located on any portion of the lot where parking is permitted;
 7 amending Section 27.41.040 to delete subparagraph (m) to delete the storage of vehicles for
 8 sale and resale in the H-2 zoning district on any portion of the lot where parking is permitted;
 9 amending Section 27.43.030 of the Lincoln Municipal Code to revise subparagraph (k) to
 10 provide additional conditions regarding the storage/display of vehicles for sale and resale in
 11 the H-3 Highway Commercial District when located on any portion of a lot where parking is
 12 permitted, and amending Section 27.43.040 to delete subparagraph (q) to delete the storage
 13 of vehicles for sale and resale in the H-3 zoning district on any portion of a lot where parking
 14 is permitted as a special permitted use; amending Section 27.49.030 to add a subparagraph
 15 (g) to provide conditions regarding the storage/display of vehicles for sale and resale in the I-2
 16 Industrial District when located on any portion of the lot where parking is permitted;
 17 amending Section 27.49.040 to delete subparagraph (j) to delete the storage of vehicles for
 18 sale and resale in the I-2 zoning district on any portion of the lot where parking is permitted;
 19 repealing Section 27.63.700 of the Lincoln Municipal Code relating to special permits for the
 20 storage of vehicles for sale where parking is permitted; and repealing Sections 27.33.040,
 21 27.41.030, 27.41.040, 27.43.030, 27.43.040, 27.49.030, and 27.49.040 of the Lincoln
 22 Municipal Code as hitherto existing.

23 BE IT ORDAINED by the City Council of the City of Lincoln, Nebraska:

24 Section 1. That Section 27.33.040 of the Lincoln Municipal Code be amended
25 to read as follows:

27.33.040 Permitted Special Uses.

A building or premises may be used for the following purposes in the B-3 Commercial District if a special permit for such use has been obtained in conformance with the requirements of Chapter 27.63:

- (a) Health care facilities;
- (b) Recreational facilities;
- (c) Church steeples, towers, and ornamental spires which exceed the maximum district height;
- (d) Broadcast towers;
- (e) Expansion of nonconforming use;
- (f) Historic preservation;
- (g) Public utility purposes;
- (h) Wind energy conversion systems;
- (i) Cemeteries;
- (j) Dwellings above the first story of a building which cannot meet the yard requirements of Section 27.33.080(g);
- (k) Sale of alcoholic beverages for consumption on the premises;
- (l) Sale of alcoholic beverages for consumption off the premises;
- ~~(m) Storage of vehicles for sale and resale on any portion of the lot where parking is permitted.~~

Section 2. That Section 27.41.030 of the Lincoln Municipal Code be amended to read as follows:

27.41.030 Permitted Conditional Uses.

A building or premises may be used for the following purposes in the H-2 Highway Business District in conformance with the conditions prescribed herein:

- (a) Automobile/truck wash facility:
 - (1) Automatic, conveyor-operated: The length and location of vehicle stacking lane or lanes for the approach side or sides and the exit side or sides of the wash operation shall be in conformance with the "guidelines and regulations for driveway design and location" as adopted by the City of Lincoln.

1 (2) Self-service, coin-operated: The wash facility shall not exceed six wash
 2 bays. The length and location of vehicle stacking lane or lanes for the approach side or sides
 3 and the exit side or sides of the wash operation shall be in conformance with the "guidelines
 4 and regulations for driveway design and location" as adopted by the City of Lincoln.

5 (b) Motels and hotels: A distance of at least twenty feet shall be maintained
 6 between buildings on the lot, and each hotel or motel unit shall have a minimum enclosed
 7 floor area of 200 square feet.

8 (c) Service facilities, including but not limited to repair and maintenance of home
 9 and office equipment, electrical appliances, radio and television sets, and rental equipment;
 10 and the places of business of plumbing, electrical, and heating and air conditioning
 11 contractors.

12 All storage and display of merchandise shall be screened from public view by a fence,
 13 walls, shrubs, material obstruction, or all such storage and display shall be within the
 14 enclosure walls of a building.

15 (d) Early childhood care facilities:

16 (1) Such facilities shall comply with all applicable state and local early
 17 childhood care requirements;

18 (2) Such facilities shall comply with all applicable building and life safety
 19 code requirements;

20 (3) Such facilities shall be fenced and have play areas that comply with the
 21 design standards for early childhood care facilities;

22 (4) Such facilities must receive a conditional use permit from the Department
 23 of Building and Safety.

24 (e) Recycling center:

25 (1) Building area of such center shall not exceed 8,000 square feet;

26 (2) Adequate traffic stacking shall be provided on site as determined by the
 27 city;

28 (3) All required parking shall be provided on site;

29 (4) The facility shall not be designed to receive nor shall it accept shipments
 30 by semi-trailer trucks;

1 (5) Construction and operation of such center shall comply with all
2 applicable health and fire codes.

3 (f) Vehicle body repair shop:

4 (1) All salvage material including vehicles being salvaged shall be inside a
5 building;

6 (2) All vehicles stored outside shall be repaired to an operating state within
7 thirty days;

8 (3) All vehicles stored outside waiting repair shall be screened in accordance
9 with the screening requirements for salvage and scrap processing operations;

10 (4) Construction and operation of such shop shall comply with all applicable
11 health and fire codes;

12 (5) Vehicle body repair shops lawfully existing on the effective date of this
13 ordinance shall have until January 1, 1987 to be brought into compliance with conditions (1),
14 (2), (3), and (4) above.

15 (g) The storage of vehicles for sale and resale in the front yard:

16 (1) The storage of vehicles for sale and resale is permitted in the front yard
17 except for the front six feet.

18 (2) Parking barriers in accordance with parking lot design standards must be
19 provided around the storage/display area to prevent the vehicles stored/displayed for sale or
20 resale from overhanging the front six feet of the front yard where vehicles are not permitted
21 to be stored/displayed for sale or resale.

22 (3) No vehicle shall be stored/displayed for sale or resale in the front yard
23 upon a raised concrete island or on a raised display structure.

24 (4) The hood or trunk or both of vehicles stored/displayed for sale or resale
25 in the front yard shall not be open except when inspected by a customer or for servicing.

26 (5) The front six feet of the front yard not permitted to be used for the storage
27 of vehicles for sale and resale shall not be used for customer or employee parking but shall
28 be devoted to shrubs and grasses.

29 (6) The front six feet of the front yard not permitted to be used for the storage
30 of vehicles for sale and resale shall be screened at least sixty percent from zero feet to two feet

1 above the surface of the lot. The design and construction of the landscaping shall be in
2 conformance with the Design Standards for Screening and Landscaping except that fences may
3 not be used to meet the above screening requirements. If plant material is used, the density
4 percentage is calculated using the design size found in the City of Lincoln's plant material list
5 approved by the Planning Director. The screen shall be located throughout the area but far
6 enough from the barrier so as to be protected from the bumpers of overhanging vehicles.
7 Entrance driveways shall be excluded from the required screen.

8 (7) No fence shall be erected in the front yard.

9 (8) Any existing automobile sales facility lawfully established on the effective
10 date of this ordinance which does not comply with conditions (1) through (7) above may be
11 continued in accordance with the provisions of Chapter 27.61 for nonconforming uses.

12 Section 3. That Section 27.41.040 of the Lincoln Municipal Code be amended
13 to read as follows:

14 **27.41.040 Permitted Special Uses.**

15 A building or premises may be used for the following purposes in the H-2 Highway
16 Business District if a special permit for such use has been obtained in conformance with the
17 requirements of Chapter 27.63:

- 18 (a) Outdoor theaters;
- 19 (b) Broadcast towers;
- 20 (c) Extraction of sand, gravel, and soil;
- 21 (d) Church steeples, towers, and ornamental spires exceeding the maximum
22 permitted height of the H-2 Highway Business District;
- 23 (e) Outdoor lighting for recreational facilities;
- 24 (f) Expansion of nonconforming uses;
- 25 (g) Historic preservation;
- 26 (h) Public utilities purposes;
- 27 (i) Wind energy conversion systems;
- 28 (j) Cemeteries;
- 29 (k) Sale of alcoholic beverages for consumption on the premises;
- 30 (l) Sale of alcoholic beverages for consumption off the premises;

1 (m) ~~Storage of vehicles for sale and resale on any portion of the lot where parking~~
2 ~~is permitted;~~

3 ~~(n) Sexually oriented live entertainment establishments.~~

4 Section 4. That Section 27.43.030 of the Lincoln Municipal Code be amended
5 to read as follows:

6 **27.43.030 Permitted Conditional Uses.**

7 A building or premises may be used for the following purposes in the H-3 Highway
8 Commercial District in conformance with the conditions prescribed herein:

9 (a) Automobile/truck wash facility:

10 (1) Automatic, conveyor-operated: The length and location of vehicle
11 stacking lane or lanes for the approach side or sides and the exit side or sides of the wash
12 operation shall be in conformance with the "guidelines and regulations for driveway design
13 and location" as adopted by the City of Lincoln.

14 (2) Self-service, coin-operated: The length and location of vehicle stacking
15 lane or lanes for the approach side or sides and the exit side or sides of the wash operation
16 shall be in conformance with the "guidelines and regulations for driveway design and
17 location" as adopted by the City of Lincoln.

18 (b) Motels and hotels: A distance of at least twenty feet shall be maintained
19 between buildings on the lot and each hotel or motel unit shall have a minimum enclosed
20 floor area of 200 square feet.

21 (c) Early childhood care facilities:

22 (1) Such facilities shall comply with all applicable state and local early
23 childhood care and building requirements;

24 (2) Such facilities shall comply with all applicable building and life safety
25 code requirements;

26 (3) Such facilities shall be fenced and have play areas that comply with the
27 design standards for early childhood care facilities;

28 (4) Such facilities must receive a conditional use permit from the Department
29 of Building and Safety.

30 (d) Recycling center:

- 1 (1) Building area of such center shall not exceed 8,000 square feet;
- 2 (2) Adequate traffic stacking shall be provided on site as determined by the
- 3 city;
- 4 (3) All required parking shall be provided on site;
- 5 (4) The facility shall not be designed to receive nor shall it accept shipments
- 6 by semi-trailer trucks;
- 7 (5) Construction and operation of such center shall comply with all
- 8 applicable health and fire codes.
- 9 (e) Vehicle body repair shop:
- 10 (1) All salvage material including vehicles being salvaged shall be inside a
- 11 building;
- 12 (2) All vehicles stored outside shall be repaired to an operating state within
- 13 thirty days;
- 14 (3) All vehicles stored outside waiting repair shall be screened in accordance
- 15 with the screening requirements for salvage and scrap processing operations;
- 16 (4) Construction and operation of such shop shall comply with all applicable
- 17 health and fire codes;
- 18 (5) Vehicle body repair shops lawfully existing on the effective date of this
- 19 ordinance shall have until January 1, 1987 to be brought into compliance with conditions (1),
- 20 (2), (3), and (4) above.
- 21 (6) Parking shall be provided in accordance with Section 27.67.066.
- 22 (7) Vehicle body repair shops shall not be converted to a permitted use
- 23 unless all the parking requirements of Section 27.67.020 for such use are met.
- 24 (f) Truck and heavy equipment sales:
- 25 (1) Parking shall be provided in accordance with Section 27.67.066.
- 26 (2) Truck and heavy equipment sales shall not be converted to a permitted
- 27 use unless all the parking requirements of Section 27.67.020 for such use are met.
- 28 (g) Farm machinery sales establishments:
- 29 (1) Parking shall be provided in accordance with Section 27.67.066.

1 (2) Farm machinery sales establishments shall not be converted to a
2 permitted unless all the parking requirements of Section 27.67.020 for such use are met.

3 (h) Motor truck terminals:

4 (1) Parking shall be provided in accordance with Section 27.67.066.

5 (2) Motor truck terminals shall not be converted to a permitted use unless
6 all the parking requirements of Section 27.67.020 for such use are met.

7 (i) Mobile home sales:

8 (1) Parking shall be provided in accordance with Section 27.67.066.

9 (2) Mobile home sales shall not be converted to a permitted use unless all
10 the parking requirements of Section 27.67.020 for such use are met.

11 (j) Places of business of plumbing contractors, heating and air conditioning
12 contractors, and cabinet shops:

13 (1) Parking shall be provided in accordance with Section 27.67.066.

14 (2) Said places of business shall not be converted to a permitted unless all
15 the parking requirements of Section 27.67.020 for such use are met.

16 (k) Automobile sales and repair, but not including vehicle body repair shops:

17 (1) Parking shall be provided in accordance with Section 27.67.066.

18 (2) The storage of vehicles for sale and resale is permitted in the front yard
19 under the following conditions:

20 (i) The storage of vehicles for sale and resale is permitted in the front
21 yard except for the front six feet.

22 (ii) Parking barriers in accordance with parking lot design standards
23 must be provided around the storage/display area to prevent the vehicles stored/displayed for
24 sale or resale from overhanging the front six feet of the front yard where vehicles are not
25 permitted to be stored/displayed for sale or resale.

26 (iii) No vehicle shall be stored/displayed for sale or resale in the front
27 yard upon a raised concrete island or on a raised display structure.

28 (iv) The hood or trunk or both of vehicles stored/displayed for sale or
29 resale in the front yard shall not be open except when inspected by a customer or for
30 servicing.

1 (3) The front six feet of the front yard not permitted to be used for the storage
2 of vehicles for sale and resale shall not be used for customer or employee parking but shall
3 be devoted to shrubs and grasses.

4 (4) The front six feet of the front yard not permitted to be used for the storage
5 of vehicles for sale and resale shall be screened at least sixty percent from zero feet to two feet
6 above the surface of the lot. The design and construction of the landscaping shall be in
7 conformance with the Design Standards for Screening and Landscaping except that fences may
8 not be used to meet the above screening requirements. If plant material is used, the density
9 percentage is calculated using the design size found in the City of Lincoln's plant material list
10 approved by the Planning Director. The screen shall be located throughout the area but far
11 enough from the barrier so as to be protected from the bumpers of overhanging vehicles.
12 Entrance driveways shall be excluded from the required screen.

13 (5) No fence shall be erected in the front yard.

14 (6) Any existing automobile sales facility lawfully established on the effective
15 date of this ordinance which does not comply with conditions (1) through (5) above may be
16 continued in accordance with the provisions of Chapter 27.61 for nonconforming uses.

17 (27) Automobile sales and repair shops shall not be converted to a permitted
18 use unless all the parking requirements of Section 27.67.020 for such use are met.

19 (l) Assembly facilities, including but not limited to the assembly of equipment,
20 instruments and appliances such as computers and musical instruments.

21 (1) Assembly facilities may include limited fabrication of finished parts to
22 be used in such assembly.

23 (2) The floor area of such facilities shall not exceed 50,000 square feet.

24 (3) Parking shall be provided in accordance with Section 27.67.066.

25 (4) Assembly facilities shall not be converted to a permitted use unless all
26 the parking requirements of Section 27.67.020 for such use are met.

27 Section 5. That Section 27.43.040 of the Lincoln Municipal Code be amended
28 to read as follows:

27.43.040 Permitted Special Uses.

A building or premises may be used for the following purposes in the H-3 Highway Commercial District if a special permit for such use has been obtained in conformance with the requirements of Chapter 27.63:

- (a) Extraction of sand, gravel, and soil;
- (b) Bulk storage of petroleum products;
- (c) Broadcast towers;
- (d) Church steeples, towers, and ornamental spires exceeding the maximum permitted height in the H-3 Highway Commercial District;
- (e) Outdoor lighting for recreational facilities;
- (f) Expansion of nonconforming use;
- (g) Historic preservation;
- (h) Stores and shops for retail sales and service which exceed 20,000 square feet of floor area;
- (i) Public utility purposes;
- (j) Wind energy conversion systems;
- (k) Small batch concrete dispensing units;
- (l) Health care facilities;
- (m) Cemeteries;
- (n) Sale of alcoholic beverages for consumption on the premises;
- (o) Sale of alcoholic beverages for consumption off the premises;
- (p) Limited landfills;
- (q) ~~Storage of vehicles for sale and resale on any portion of the lot where parking is permitted;~~
- ~~(r) Sexually oriented live entertainment establishments.~~

Section 6. That Section 27.49.030 of the Lincoln Municipal Code be amended to read as follows:

27.49.030 Permitted Conditional Uses.

A building or premises may be used for the following purposes in the I-2 Industrial Park District in conformance with the conditions prescribed herein:

(a) Fuel oil storage tanks and all bulk storage of oils, petroleum and similar flammable liquids and chemicals:

(1) Shall be adequately screened from public view;

(2) Shall be for storage of such materials for use on the premises and not for resale, except that resale of such stored material at retail only shall be permitted in conjunction with the operation of a service station or similar retail outlet;

(3) Shall be located, constructed, maintained, and operated in compliance with all codes and regulations of the City of Lincoln.

(b) Liquefied petroleum gas and similar gas used for fuel stored above ground:

(1) Tanks may not exceed 30,000 gallon capacity;

(2) Such gas shall be for use on the premises, and not for resale;

(3) Such tanks shall be adequately screened from public view by a fire-resistant ventilated barrier which shall be at least six feet in height;

(4) Must be in full compliance with all codes and regulations of the City of Lincoln;

(c) All other combustible material: To be stored in such a way as to permit free access of fire-fighting equipment.

(d) Open storage of any other material: Only in areas enclosed or otherwise adequately screened from public view with an enclosure or screen at least six feet in height.

(e) Neighborhood recycling center:

(1) Building area of such center shall not exceed 8,000 square feet;

(2) There shall be no outdoor storage of materials or equipment;

(3) The operation of such center shall not include dismantling or disassembling of vehicles or major appliances;

(4) No hazardous or explosive materials shall be accepted at such center;

(5) Adequate traffic stacking shall be provided on site as determined by the city;

1 (6) All required parking shall be provided on site;

2 (7) There shall be no processing of materials by heat, including, but not
3 limited to, melting, smelting, or burning;

4 (8) The facility shall not be designed to receive nor shall it accept shipments
5 by semi-trailer trucks;

6 (9) Construction and operation of such center shall comply with all
7 applicable health and fire codes.

8 (f) Vehicle body repair shop:

9 (1) All salvage material, including vehicles being salvaged, shall be inside
10 a building;

11 (2) All vehicles stored outside shall be repaired to an operating state within
12 thirty days;

13 (3) All vehicles stored outside waiting repair shall be screened in accordance
14 with the screening requirements for salvage and scrap processing operations;

15 (4) Construction and operation of such shop shall comply with all applicable
16 health and fire codes;

17 (5) Vehicle body repair shops lawfully existing on the effective date of this
18 ordinance shall have until January 1, 1987 to be brought into compliance with conditions (1),
19 (2), (3), and (4) above.

20 (g) The storage of vehicles for sale and resale in the front yard:

21 (1) The storage of vehicles for sale and resale is permitted in the front yard
22 except for the front six feet.

23 (2) Parking barriers in accordance with parking lot design standards must be
24 provided around the storage/display area to prevent the vehicles stored/displayed for sale or
25 resale from overhanging the front six feet of the front yard where vehicles are not permitted
26 to be stored/displayed for sale or resale.

27 (3) No vehicle shall be stored/displayed for sale or resale in the front yard
28 upon a raised concrete island or on a raised display structure.

29 (4) The hood or trunk or both of vehicles stored/displayed for sale or resale
30 in the front yard shall not be open except when inspected by a customer or for servicing.

1 (5) The front six feet of the front yard not permitted to be used for the storage
2 of vehicles for sale and resale shall not be used for customer or employee parking but shall
3 be devoted to shrubs and grasses.

4 (6) The front six feet of the front yard not permitted to be used for the storage
5 of vehicles for sale and resale shall be screened at least sixty percent from zero feet to two feet
6 above the surface of the lot. The design and construction of the landscaping shall be in
7 conformance with the Design Standards for Screening and Landscaping except that fences may
8 not be used to meet the above screening requirements. If plant material is used, the density
9 percentage is calculated using the design size found in the City of Lincoln's plant material list
10 approved by the Planning Director. The screen shall be located throughout the area but far
11 enough from the barrier so as to be protected from the bumpers of overhanging vehicles.
12 Entrance driveways shall be excluded from the required screen.

13 (7) No fence shall be erected in the front yard.

14 (8) Any existing automobile sales facility lawfully established on the effective
15 date of this ordinance which does not comply with conditions (1) through (7) above may be
16 continued in accordance with the provisions of Chapter 27.61 for nonconforming uses.

17 Section 7. That Section 27.49.040 of the Lincoln Municipal Code be amended
18 to read as follows:

19 **27.49.040 Permitted Special Uses.**

20 A building or premises may be used for the following purposes in the I-2 Industrial Park
21 District if a special permit for such use has been obtained in conformance with the require-
22 ments of Chapter 27.63:

- 23 (a) Mining, quarrying, and stone mills;
24 (b) Broadcast towers;
25 (c) Early childhood care facilities;
26 (d) Expansion of nonconforming use;
27 (e) Historic preservation;
28 (f) Wind energy conversion systems;
29 (g) Enclosed disassembly operation in conformance with Section 27.63.500;
30 (h) Sale of alcoholic beverages for consumption on the premises;

1 (i) Any permitted use which exceeds the maximum height permitted in the district;

2 (j) ~~Storage of vehicles for sale and resale on any portion of the lot where parking~~
3 ~~is permitted;~~

4 ~~(k)~~ Sexually oriented live entertainment establishments.

5 Section 8. That Section 27.63.700 of the Lincoln Municipal Code be and the
6 same is hereby repealed:

7 ~~27.63.700 Permitted Special Use: Storage of Vehicles for Sale Where Parking is Permitted:~~

8 ~~The storage of vehicles for sale and resale in the B-3, H-2, H-3, and I-2 zoning districts~~
9 ~~may be permitted upon any portion of the lot where parking is permitted. Any area in a~~
10 ~~required front yard used for such storage of vehicles must conform to the parking lot design~~
11 ~~standards unless specifically adjusted or waived by the City Council.~~

12 Section 9. That Sections 27.33.040, 27.41.030, 27.41.040, 27.43.030,
13 27.43.040, 27.49.030, and 27.49.040 of the Lincoln Municipal Code as hitherto existing be
14 and the same are hereby repealed.

15 Section 10. That this ordinance shall take effect and be in force from and after
16 its passage and publication according to law.

Introduced by:

Approved as to Form & Legality:

City Attorney

Staff Review Completed:

Administrative Assistant

Approved this ___ day of _____, 2002:

Mayor